

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GD CONCRETE CONSTRUCTION,
INC., a Nebraska corporation,

CASE NO.: 8:24-cv-00287

Plaintiff,

v.

THE WHITING-TURNER
CONTRACTING COMPANY, a
Maryland corporation, and FIDELITY
AND DEPOSIT COMPANY OF
MARYLAND, an Illinois corporation,

Defendants,

THE WHITING-TURNER
CONTRACTING COMPANY,

Third-Party Plaintiff,

v.

GRANITE RE, INC., a foreign
corporation,

Third-Party Defendant.

THE WHITING-TURNER CONTRACTING COMPANY'S
THIRD-PARTY COMPLAINT

Defendant, The Whiting-Turner Contracting Company ("Whiting-Turner"), for its Third-Party Complaint against Granite Re, Inc., states, avers and alleges as follows:

1. At all relevant times, GD Concrete Construction, Inc. ("GD Concrete") conducted business as a concrete contractor in the State of Nebraska with its principal place of business in Overton, Dawson County, Nebraska.

2. At all relevant times, Granite Re, Inc. ("Granite Re") was an Oklahoma corporation, conducting business as a surety and bonding company.

3. At all relevant times, Whiting-Turner was a Maryland corporation authorized to conduct business in the State of Nebraska as a general construction contractor.

4. On or about April 21, 2022, GD Concrete entered into a subcontract with Whiting-Turner for the former to perform certain structural concrete work on the construction of a real estate improvement project for the Museum of Nebraska Art ("MONA") at 2401 Central Avenue, Kearney, Nebraska 68847 ("the Project").

5. On or about April 27, 2022, Granite Re issued a performance and payment bond (Bond No. GRNE 54083), guaranteeing GD Concrete's performance of its contractual obligations on the Project up to the amount of \$639,720.00 ("the Bond"). A true and accurate copy of the Bond is attached hereto and marked as Exhibit A.

6. By the terms of the Bond, the subcontract between GD Concrete and Whiting-Turner was made a part of the Bond.

7. As set forth in Whiting-Turner's Counterclaim against GD Concrete, GD Concrete has materially breached its subcontract with Whiting-Turner in at least the following respects:

- a. GD Concrete failed to pay for labor and/or materials, including, but not limited to, its concrete supplier, formwork supplier, and crane rental supplier;
- b. GD Concrete failed to pursue the work in accordance with the schedules on the Project;
- c. GD Concrete failed to supply sufficient manpower and/or materials to achieve the requisite quality and expediency of the work on the Project;
- d. GD Concrete's repeated delays disrupted the schedules of other contractors and laborers on the Project; and,

e. GD Concrete performed defective work and failed to perform in a workmanlike manner.

8. On or around November 20, 2023, Whiting-Turner issued a formal Notice of Default to GD Concrete pursuant to the parties' subcontract.

9. On or around May 29, 2024, Whiting-Turner issued a written formal demand upon Granite Re.

10. As a result of GD Concrete's material breach of the subcontract, Whiting-Turner has incurred damages totaling at least \$691,818.00.

11. Whiting-Turner has made demand upon GD Concrete and Granite Re for payment of this outstanding balance, but GD Concrete and Granite Re have failed and refused to pay the amount owing to Whiting-Turner as a result of GD Concrete's delays and poor workmanship.

12. As a result of GD Concrete's default under the subcontract and Granite Re's failure and refusal to pay the amounts due, Whiting-Turner is entitled to the following damages:

- a. Contract damages totaling no less than \$691,818.00;
- b. Prejudgment interest; and,
- c. Attorneys' fees.

WHEREFORE, Whiting-Turner respectfully requests that this Court enter an order granting Whiting-Turner an award of at least \$691,818.00 against Granite Re, plus prejudgment interest and attorneys' fees, and any additional damages to which Whiting-Turner is entitled under the laws of the State of Nebraska.

Dated this 25th day of September, 2024.

THE WHITING-TURNER
CONTRACTING COMPANY,
Defendant/Counterclaimant,

By S/ Matthew B. Reilly
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 25, 2024, a true and correct copy of the above and foregoing Third-Party Complaint was filed using the Court's CM/ECF System, which system automatically generates service upon the following counsel of record:

Joseph F. Willms
Woods Aitken, LLP
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Omaha, NE 68114

S/ Matthew B. Reilly, NE Bar #24186